REMARKS

Applicant intends this response to be a complete response to the Examiner's **25 June 2003** Non-Final Office Action. Applicant has labeled the paragraphs in his response to correspond to the paragraph labeling in the Office Action for the convenience of the Examiner.

Preliminary Remarks – Commercial Success

Applicants have taken the subject matter of this invention and have commercialized the subject matter in a product known as DataArc and PocketRC. These products have met with tremendous commercial success and the system is one if not the most used tracking system for medical schools in the country. The evidence of commercial success are set forth in the attached Rule 131 Declaration and associated evidentiary support.

Rejections Under 35 U.S.C. §103

Claims 1-14 stand rejected under 35 USC 103(a) as being unpatentable over Kersting (1983) in view of time clock plus.com (www.timeclockplus.com) and in further view of Hamlin (US 6477504).

The Examiner contends as follows:

> Regarding claim 1, Kersting discloses a system on a computer network for medical students for tracking and verifying various activities. The specific components of a GUI, database, logon, student, staff, clinician, and faculty subsystems would be obvious to one of ordinary skill in the act to include since they are the basic components of a network system of this form. Kersting fails to disclose time in and time out routines for time stamping a user's activity. Timeclockplus.com teaches the use of a computerized system for tracking an employee's work hours. Using the Internet Archive Wayback Machine (www.archive.org), it was found that the Timeclockplus.com main page was first made available to the public on February 9, 1999 and is therefore prior art. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a time clock system in the system of Kersting so a more accurate record can be kept on each individual student. Kersting also fails to disclose a survey system. Hamlin teaches surveys being well known as a "research solution to obtain the necessary information within the client's given constraints" (col. 1, 1. 49-56). It would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a survey for student feedback about the service provided in Kersting as disclosed in Hamlin to provide information about the success of the system so improvements may be made for a better overall performance.

Applicants wholly disagree with the Examiner's reading of Kersting. We previously supplied the Examiner with the entire reference. It is clear that the Kersting system was designed not to operate over a network (*i.e.*, Kersting was not designed to be network accessible), especially an open network such as the Internet, because operating over a network, especially an open network, would

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make the system vulnerable to penetration and obviate one of the goals of Kersting -- to provide local control anrws wubby

d limited access for data entry, retrieval and processing. The Kersting system was implemented on **a stand-alone computer** "without linking to other university networks." Kersting abstract third paragraph end of first sentence. The Kersting system was not designed to be network accessible or to operate on a network with unlimited access. The system was designed to operate on a single computer with limited access for site specific control over the curriculum, data entry and data analysis.

The Examiner uses language in Kersting to support the extension to networks, but the only mention of networks was in the limited context that the stand alone computer could be linked to a network. A simple connection to a network does not mean that the program is network accessible or even designed to allow access over a network. Kersting did not teach open access to the program; Kersting only taught that the stand alone computer could be connected to a network. Connecting a stand alone system to a network is not the same as implementing the program on a distributed computer network with open access to all on the network. Kersting does not disclose, teach or suggest how to migrate the system from a stand alone environment with a single data entry person to a distributed environment, a major paradigm shift. The present program was designed to operate on an unlimited access basis from any site on an internet architecture and was designed to allow students (any number), instructors, monitors, or other professionals with unlimited access for a variety of different purposes – data entry, data analysis, work approval, data storage and data retrieval.

Because Kersting was focused on a stand alone implementation to control access and control data, Applicants continue to assert that Kersting teaches away from a clinical information system implemented on a fully integrated, access unlimited, computer network system such as the Internet - an interconnected network distributed computing environment. Again the full Kirsting dissertation clearly evidences that the system was specifically designed and implemented on a stand alone micro-computer, which allowed for improved control and limited access. The dissertation also evidenced that the data was entered from data forms by a single data entry person – complete data entry control. A stand alone system provided significant data entry control, analysis and dissemination – a key component of the Kersting system.

On the contrary, the present invention is designed specifically for implementation on a distributed computer network like the Internet. It is designed to be accessible from many different

locations for a variety of purposes: student for data entry, supervisors for data entry, data verification, data submission and data analysis, administrators for data analysis and reporting and accreditation personnel for program review and approval. Thus, the accreditation boards can review student performance results from their own facilities without having to travel to each university to review student performance data.

Moreover, data entry is performed directly by the student during the entire clinical phase of the student's study allowing supervisors to oversee many students without having to physically observe them and to track student progress based on the student's time stamped data entries. Furthermore, data submission is only possible after supervisor approval of the students performance providing an additional check-and-balance system. Thus, Kersting does not disclose teach o r suggest a student tracking, performance review and accreditation review system implemented on a fully networked computer system. In fact, Kersting clearly teaches directly away from the present invention which is actually the antithesis of a stand alone computer system.

While timeclockplus.com discloses a time stamp process, coupling this time stamp process with a reference that teaches solidly away from the present invention does nothing to remove the deficiencies of the principal reference, timeclockplus does nothing to cure the basic defects in the Kersting reference – lack of any teaching to an unlimited access, network based student entry and tracking data system. Kersting's solution was to isolate the system from network access – to limit vulnerability and maximize control – even though the micro-computer could be connected to a network the Kersting system was not designed to network accessible (no data entry over the network), it was not meant to function on an open network.

As to Hamlin, Hamlin relates to surveys. The present invention uses surveys to help evaluate the curriculum and the program. The present invention is not a survey system, but utilizes such surveys as a component of tracking student clinical performance, clinical curriculum evaluations, faculty tracking and approval of student clinical performance, data analysis of student performance and curriculum design and implementation, faculty oversight, and accreditation documentation system.

As set forth in the Declaration of Dr. Nilsestuen, a commercial version encompassing the subject matter of this application has enjoyed tremendous commercial success. If the subject matter of this application was obvious as the Examiner clearly believes , then the program would not now be enjoying such outstanding commercial success. Based on this commercial success, Applicants clearly disagree with the contention that the subject matter of this invention is obvious over the prior

art and so does the consuming public which has propelled the subject matter of this application into a prominent position in the tracking of medical school students, programs and program accreditation. Such commercial success must be considered in accessing obviousness as set forth by the United States Supreme Court. The commercial success of the commercial version of this application is potent and persuasive evidence arguing against obviousness.

Because Kersting, the primary reference, teaches squarely away from a student performance management system implemented on a distributed computer network such as the Internet, and teaches to a stand alone computer system and because neither timeclockplus.com nor Hamlin cure this deficiency, the combination of these references simply does not combine to form a student evaluation management system implemented on a distributed computer system such as the Internet as set forth in the claims of this invention.

Moreover, the tremendous commercial success enjoyed by the commercial version of this application i s s trong e vidence o f n on-obviousness. A pplicants, t herefore, r espectfully r equest withdrawal of this section 103(a) rejection.

The Examiner contends as follows:

> As to claim 2, it would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a separate survey for each different user that can access the system since each person may have different functions available after they logon.

Applicants reassert the discussions set forth above. Again, because Kersting teaches a stand alone system of access control; it teaches squarely away from a medical student tracking program having u nlimited n etwork a ccess f or d ata e ntry, d ata s torage, d ata r eview, d ata r etrieval, data analysis, program certification analysis a nd p rogram monitoring implemented on a distributed computer network such as the Internet and the other references do not cure this basic defect of Kersting, the combination of the references cannot render claim 2 of this invention obvious. Again, the commercial success of this program clearly argues against the claims currently under evaluation being obvious over the prior art. Applicants, therefore, respectfully request withdrawal of this section 103(a) rejection.

The Examiner contends as follows:

Regarding claim 3, modified Kersting discloses the specific time clock functions.

Applicants reassert the discussions set forth above. Again, because Kersting teaches a stand alone system of access control; it teaches squarely away from a medical student tracking program having u nlimited n etwork a ccess f or d ata e ntry, d ata s torage, d ata r eview, d ata r etrieval, data

analysis, program certification analysis and program monitoring implemented on a distributed computer network such as the Internet and the other references do not cure this basic defect of Kersting, the combination of the reference cannot render claim 3 of this invention obvious. Again, the commercial success of this program clearly argues against the claims currently under evaluation being obvious over the prior art. Applicants, therefore, respectfully request withdrawal of this section 103(a) rejection.

The Examiner contends as follows:

> Referring to claims 4-6, it would have been obvious at the time the invention was made to a person of ordinary skill in the art to include different functions on the system depending upon the particular user since each user performs different functions, i.e., students record observations and staff members review students' progress.

Applicants reassert the discussions set forth above. Again, because Kersting teaches a stand alone system of access control; it teaches squarely away from a medical student tracking program having unlimited network access for data entry, data storage, data review, data retrieval, data analysis, program certification analysis and program monitoring implemented on a distributed computer network such as the Internet and the other references do not cure this basic defect of Kersting, the combination of the references cannot render claims 4-6 of this invention obvious. Again, the commercial success of this program clearly argues against the claims currently under evaluation being obvious over the prior art. Applicants, therefore, respectfully request withdrawal of this section 103(a) rejection.

The Examiner contends as follows:

> In regard to claims 7, 8, 11 and 12, Kersting discloses the system residing on a server connected to the Internet and the system web-based.

Applicants reassert the discussions set forth above. Again, because Kersting teaches a stand alone system of access control; it teaches squarely away from a medical student tracking program having unlimited network access for data entry, data storage, data review, data retrieval, data analysis, program certification analysis and program monitoring implemented on a distributed computer network such as the Internet and the other references do not cure this basic defect of Kersting, the combination of the reference cannot render claims 7-8, and 11-12 of this invention obvious. Again, the commercial success of this program clearly argues against the claims currently under evaluation being obvious over the prior art. Applicants, therefore, respectfully request withdrawal of this section 103(a) rejection.

The Examiner contends as follows:

As to claims 9, 10, 13 and 14, the method of entering, updating, and retrieving data would be obvious to any user of the system.
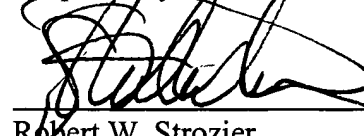
Applicants reassert the discussions set forth above. Again, because Kersting teaches a stand alone system of access control; it teaches squarely away from a medical student tracking program having unlimited network access for data entry, data storage, data review, data retrieval, data analysis, program certification analysis and program monitoring implemented on a distributed computer network such as the Internet and the other references do not cure this basic defect of Kersting, the combination of the reference cannot render claims 9-10 and 13-14 of this invention obvious. Again, the commercial success of this program clearly argues against the claims currently under evaluation being obvious over the prior art. Applicants, therefore, respectfully request withdrawal of this section 103(a) rejection.

Having fully responded to the Examiner's Non-Final Office Action, Applicant respectfully urges that this application be passed onto allowance.

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicant's attorney Robert W. Strozier at 713.977.7000

Date: **March 2, 2004**   Respectfully submitted,

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